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Maxine M. Harrington
Texas A&M University School of Law, mharrington@law.tamu.edu

Ann O'Regan Keary

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MAXINE M. HARRINGTON, ESQ.* and ANN O'REGAN KEARY, ESQ.**

The insanity defense in delinquency proceedings poses an important legal dilemma concerning the rights of children in the juvenile justice system. Indeed, beyond the purely legal concerns of the rights of an accused juvenile, the concept of criminal responsibility in the context of juvenile court proceedings raises perhaps an even more important issue of what is the best model for dealing with mentally ill juvenile offenders, both from the juvenile's viewpoint and that of society as a whole. It is our opinion that not only does the insanity defense have an appropriate role in juvenile proceedings, but that legal as well as practical considerations dictate that juveniles be permitted to raise the defense. Denial of this defense to juveniles poses serious negative ramifications for our system of justice and the individual accused child.

Between 1966 and 1975, the U.S. Supreme Court broke new ground in extending certain constitutional rights to children in juvenile delinquency proceedings. Previously, such children, although charged with criminal offenses, had been afforded significantly fewer procedural rights than adults who were charged with the same offenses. Although during the 1960's, the federal courts and, in particular, the Supreme Court, had provided many legal protections and safeguards for the rights of adult criminal defendants, such protections had never been extended to accused juveniles. Rather, juveniles were treated within the framework of a system whose goals were rehabilitation and treatment, as deemed to be in the best interests of the particular child. The informal, non-adversary nature of juvenile proceedings, which were labeled "civil" rather than "criminal," had been considered beneficial to the juvenile and consistent with the rehabilitative purpose of the juvenile justice system. However, as the Supreme Court recognized in its 1967 landmark opinion, *In re Gault,*[1] important constitutional rights of children had, in fact, been sacrificed in exchange for the theoretically beneficial treatment of the civil-style proceedings.

In a series of cases dealing with the juvenile court system, the Supreme Court has generally held that juveniles charged with criminal

*Ms. Harrington is a staff attorney, Office of Legal Advisor, Saint Elizabeths Hospital, Department of Health and Human Services, Washington, D.C.
**Ms. Keary is also a staff attorney, Office of Legal Advisor at Saint Elizabeths Hospital.

offenses must be afforded due process safeguards similar to those which the Court had guaranteed to adult criminal defendants. First, in *Kent v. U.S.*,[2] the court stated that procedures accorded to juveniles must measure up to the constitutional essentials of due process and fair treatment, and that counsel must be provided to the child for representation at the critical hearing on the issue of whether the child would be tried in a juvenile or adult proceeding. In the following year, having paved the way in *Kent,* the Court rendered its seminal decision, *In re Gault,* which granted accused children many of the minimal due process rights afforded to adult criminal defendants at trial, including notice of charges, right to counsel, right to confront and cross-examine witnesses and the privilege against self-incrimination. The *Gault* opinion, which has formed the basis of all subsequent children's rights litigation and case law, eschewed the long-accepted "civil" label which had attached to juvenile proceedings. The Court's decision clearly recognized that "unbridled discretion (of the Juvenile Court), however benevolently motivated, is frequently a poor substitute for principle and procedure,"[3] where the end result may be a child's indefinite confinement in an institution.

In 1970, the Supreme Court in the case of *In re Winship*[4] expanded the list of constitutional safeguards available to juveniles when it applied the adult criminal standard of proof, beyond a reasonable doubt, to delinquency proceedings. Thus, juveniles who previously could have been adjudicated delinquent and suffered a resulting loss of liberty merely on the basis of proof by a preponderance of evidence (the civil standard of proof), were now entitled to a judgment in their favor unless the prosecution was able to prove beyond a reasonable doubt that the juvenile had committed the offense charged.

In 1971, the Court temporarily halted the extension of adult procedural safeguards to juvenile proceedings by declining to rule that juveniles were entitled to a trial by jury. In *McKeiver v. Pennsylvania,*[5] the Court reiterated the need for accused children to have the essentials of due process and fair treatment in the fact-finding process, yet ruled that trial by jury was not a concomitant necessity of accurate fact-finding. The Court's decision, which distinguished a trial by jury from the other safeguards it had considered more integral to accurate fact-finding, turned in part on the Court's concern that jury trials would alter the informal and confidential atmosphere of juvenile proceedings, a feature the Court still deemed beneficial to the children involved.

The last decision in this series of opinions was rendered in 1975 and involved the application of the double jeopardy principle to juvenile proceedings. The Fifth Amendment of the U.S. Constitution guarantees that no person shall twice be put in jeopardy of life or limb for the same offense. However, since juvenile proceedings had traditionally been considered civil, as opposed to criminal, proceedings, the defense of double jeopardy had not previously been afforded to children. In *Breed v.*

Jones,[6] the Supreme Court reaffirmed its position in *Gault* that juvenile proceedings were, in fact, criminal in nature, since their "object is to determine whether he (the child) has committed acts that violate criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years."[7] The Court, therefore, extended the protection of the Constitutional double jeopardy clause to juvenile delinquency proceedings.

Despite this flurry of legal developments in the area of juvenile rights, the Supreme Court has yet to address the issue of the role of the concept of criminal responsibility in such proceedings and whether an accused child has a right to raise a defense of insanity. The insanity defense, and the basic concept of conditioning responsibility for one's criminal act on the capacity to understand the nature of that act and to exercise free will in acting have traditionally and historically played a significant part in our criminal justice system. In 1895, the Supreme Court established the rule in federal courts that "an accused is entitled to acquittal of the specific crime charged if, upon all the evidence, there is reasonable doubt whether he was capable in law of committing the crime."[8] Today, all 50 states plus the federal government guarantee an adult accused the right to assert the defense of insanity in criminal proceedings. If found legally insane, an accused is thus excused from criminal responsibility and its attendant punishment (usually with court-ordered psychiatric treatment as an alternative disposition).

The issue of criminal responsibility, however, has not figured prominently in the juvenile justice system for the simple reason that juvenile proceedings were traditionally considered non-criminal. The focus in juvenile delinquency proceedings rested less on the issue of culpability for the offense committed than on the rehabilitative needs of the involved juvenile. Although the Supreme Court has not specifically confronted the applicability of the insanity defense to juvenile proceedings, its rulings as to other rights attendant to juvenile proceedings have laid the cornerstone upon which some state courts have ruled in favor of permitting the insanity defense to be raised in a juvenile case. One of the first nationally reported cases on this issue, *In re Winburn,*[9] was decided by the Supreme Court of Wisconsin in 1966. The Wisconsin Court relied heavily upon the Supreme Court's decision in *Kent,* guaranteeing due process and fair treatment to juveniles. In *Winburn,* this issue of first impression arose from an insanity defense raised by a 15-year-old boy charged with the fatal shooting of his mother. The Court noted, significantly, that although the philosophy behind the Wisconsin juvenile act was rehabilitation and treatment, such enforced treatment may be deemed punishment of the juvenile involved and that, in practice, retribution did in fact play a role in the juvenile court's function.[10] In view of this factor as well as the stigma attached to adjudication as a juvenile delinquent, the Court concluded that the

concept of criminal responsibility was relevant to juvenile proceedings. Moreover, the Court determined that the insanity defense should be made available, to juveniles as well as adults, as a fundamental right inherent in the fair treatment prescribed by the Supreme Court, in order to guard against unjust imposition of punishment upon a mentally impaired wrongdoer.

Similarly, later cases in California,[11] Nevada,[12] New Jersey,[13] and Louisiana,[14] ruled favorably on the issue of the applicability of the insanity defense to juvenile proceedings. These State Court opinions, the majority of which were rendered in the late 1970's, rested predominantly on an interpretation of the Supreme Court's opinions in *Kent* and *Gault* as establishing the right of a juvenile to avail himself of this defense as well as other safeguards which played an integral and legally necessary role in adult proceedings. Indeed, in *State of Louisiana in the Interest of Pate Causey*[15] the Supreme Court of Louisiana noted that the denial of the right to plead insanity would be violative of an adult criminal defendant's rights to due process and fundamental fairness under its state and federal constitutions. The Court concluded that the juvenile should, therefore, be similarly granted this right since the function of the insanity defense was essential to fair treatment.

In light of the fairly uniform approach of the state courts addressing this issue, a recent case from the District of Columbia Court of Appeals is of major interest and significance. In late 1979, the District of Columbia Court of Appeals rejected the right to interpose an insanity defense in juvenile proceedings in the case of *In re C.W.M.*[16] The Court noted that the function of the insanity defense in adult proceedings "is not to establish the innocence of the accused but to absolve him of the moral and penal consequences of his criminal act."[17] Concluding that an adjudication of delinquency is not a determination of "criminal" responsibility which results in the imposition of a penal sanction, the Court held that in view of the overall rehabilitative purpose of the juvenile system, the insanity defense would be "superfluous" in a delinquency proceeding.[18] In reaching this finding, the Court observed that the District of Columbia's practice of considering the juvenile's mental condition at the time of disposition, which is analogous to sentencing, was adequate to ensure that a child who was mentally ill at the time of the offense or the time of the disposition hearing would receive psychiatric care and treatment similar to that provided mentally ill adult defendants. *In re C.W.M.* thus turns back the clock to pre-*Gault* days when the traditional advocates of the juvenile system held tenaciously to the unrealistic dream that dispositions of juveniles adjudicated delinquent resulted in beneficial treatment and rehabilitation of a clinical rather than a punitive nature.

In re C.W.M. essentially ignores Supreme Court precedent, first established in *Gault,* which recognizes that there is a gap between the original benign beginnings of the juvenile system and its present

realities. *Gault* and its progeny had consistently rejected the notion that an adjudication of delinquency is either "non-criminal" or not geared to "punish" the child. *In re C.W.M.* also fails to address adequately the essential question: does a juvenile have a right not to be adjudicated culpable for an offense committed while he was unable to appreciate or understand the nature of his act. Legally, the issue turns on whether the insanity defense is an essential component of due process and fair treatment.[20] It can be persuasively argued that the insanity defense is a fundamental right of due process for adults: the insanity defense has long been present in English and American jurisprudence, and all 51 jurisdictions presently recognize its vital role in the administration of criminal justice. Several states' courts have expressly held that denial of the right to plead insanity violates the fundamental concept of fairness embodied in due process safeguards.[21] From this one can conclude that the insanity defense is fundamental to juvenile delinquency proceedings.[22]

Perhaps the more important facet of this issue, however, is not whether the right to plead insanity is legally required as a constitutional right of all juveniles, but whether it is desirable from either the juvenile's or society's perspective.

The early juvenile court reformers' dream of solicitude and protection of juvenile offenders from the harsh consequences of the punitive and retributive criminal system has regrettably been largely unrealized. It is today widely recognized that an adjudication of delinquency is far from harmless and, in fact, may portend grave consequences for the involved child particularly if he is emotionally disturbed. Many jurisdictions permit "indefinite" commitment of an adjudicated delinquent to an institution.[23] In some instances a juvenile can be confined longer than his adult counterpart for violation of the same law.[24] Some jurisdictions, moreover, allow juveniles to be incarcerated with adults if certain conditions are met.[25] Thus, a juvenile can theoretically be placed in an adult correctional system without having been extended the full protections of an adult trial, including the right to plead insanity.

There has also been abundant criticism of the "rehabilitative" efforts of juvenile institutions. In *Gault,* the Supreme Court was alarmed by the high recidivist rate of juvenile offenders and concluded that this fact at least "casts some doubt about the adequacy of treatment afforded juveniles."[26] One study has found that few institutions for juveniles were providing adequate psychiatric screening or services for emotionally disturbed youths, and many were failing to meet accepted standards regarding medical supervision and control.[27] It is not surprising, therefore, that in recent years, the Courts have witnessed the rise of juvenile "right to treatment" cases. In one such case, *Nelson v. Heyne,*[28] decided in 1974, a federal appellate court found that staff of a medium security "boys school" were inflicting corporal punishment upon the children (beatings with a wooden paddle) as well as indiscriminately administering tranquilizing drugs in violation of the children's

constitutional rights to be free from cruel and unusual punishment. The Court observed that the school failed to provide even the minimal rehabilitative treatment to which the confined youths were constitutionally entitled.

Apart from the moral and legal issues inherent in inflicting punishment on an individual whose illness may negate his responsibility, there are other serious ramifications of a delinquency adjudication. The child is labeled a "delinquent." Although a juvenile adjudicated delinquent may not suffer the same civil disabilities as an adult convicted of criminal acts, the Supreme Court in *Gault* recognized that in recent years "this term (delinquent) has come to involve only slightly less stigma than the term 'criminal' applied to adults."[29] In addition, although juvenile records are ostensibly confidential, court and police records are routinely disclosed to government agencies, prosecutors and law enforcement agencies.[30] Thus, an adjudication of delinquency, much like a criminal conviction, is a label that in future years may continue to be a handicap to a child.

Other factors also militate in favor of a right to assert the defense of insanity in juvenile proceedings. The entire concept of criminal responsibility is based on relieving an individual who cannot understand the nature of his act from its penal consequences.[31] Sanity and culpability are closely interrelated in our legal system. Society benefits little from punishing a child for acts which he did not intend to do, or the wrongfulness of which he could not appreciate. An adjudication of delinquency will not impress upon an insane child the significance of his offense, nor will it necessarily deter him or others from committing future criminal acts. Thus, denying the child the right to plead insanity is pointless from a utilitarian point of view, as well as unjust from a purely legal perspective.

It is also important to note that the availability of other defenses to criminal responsibility which may be raised by adults are equally applicable to juvenile proceedings, *e.g.,* accident or self-defense. It is at once apparent that if the juvenile court system will make distinctions between an accidental violation of the law and an intentional one, it should also distinguish acts committed by a child who is legally insane from those committed by one who understands the full consequences of his acts.[32]

If the insanity defense is not allowed in juvenile cases, the only alternative is for a court to consider the child's mental condition after he is adjudicated delinquent at the time of the dispositional hearing. This alternative was approved by the District of Columbia Court of Appeals in *In re C.W.M.* as the method to ensure that appropriate treatment would be provided to mentally disturbed children who were adjudicated delinquent. The court rejected the insanity defense, since, arguably, the mental health of the child and his treatment needs would be considered at the dispositional hearing where the judge could consider a broad

range of alternatives. The approach, however, treats alike all accused children who may exhibit symptoms of a mental illness, and fails to recognize that mental illness alone does not provide a sufficient basis for an acquittal by reason of insanity. A child may be mentally ill at the time of the offense, but not legally insane. A distinction, therefore, should be made between mentally ill individuals who may be legally responsible for their acts, and those who are not responsible and who should not, therefore, suffer the consequences of an adjudication of delinquency. Further, the practice of considering mental illness at the time of disposition may not adequately address the problems associated with children who were legally insane at the time of the offense, but who have recovered or been restored to mental health by the date of their disposition, or those children who were legally sane on the date of the offense, but mentally ill and in need of psychiatric treatment at the later point of the disposition hearing. As to the latter group, the juvenile system may be beneficial depending on the quality of psychiatric programs available to delinquents: it provides that in lieu of incarceration a child may be committed to a suitable facility for psychiatric treatment. As to the former category, even if the child has recovered and been released to the community, the consequences of a delinquency adjudication are still formidable.

Finally, it cannot be disputed that at the dispositional stage, most juvenile statutes grant a broad range of discretionary power to the judge in making commitment or placement decisions. There is no guarantee that a seriously mentally ill child will be hospitalized and receive needed treatment. At the most, failure to order such treatment may be considered a judicial "abuse of discretion" which the child could challenge only through formal legal proceedings brought by him at a later time. The practice of addressing the juvenile's mental condition only with regard to dispositional alternatives thus poses serious practical as well as legal problems.

Conclusion

The juvenile correctional system has generally failed in its mission of providing the benevolent treatment intended by the early reformers; moreover, the stigma of being considered a delinquent may prove deleterious to the juvenile. For those juveniles who endanger the public's safety or property, retribution may be an appropriate feature of the juvenile justice system. Society, however, has an interest in ensuring that children who are not responsible for their criminal acts are offered adequate treatment in an appropriate setting. It is important that those children, who are mentally incapable of appreciating the wrongfulness of their acts or conforming their behavior to the dictates of the law, be provided clinical intervention at the earliest possible opportunity. Absent an adequate program of treatment, the result may be that a mentally ill child will not be given a chance for effective rehabilitation

and that, at the termination of his commitment, he will be incapable of taking his proper place in society.

References

1. 387 U.S. 1 (1967)
2. 383 U.S. 541 (1966)
3. *In re Gault, supra* at 18
4. 397 U.S. 358 (1970)
5. 403 U.S. 528 (1971)
6. 421 U.S. 519 (1975)
7. *Id.* at 529
8. *Davis v. United States,* 160 U.S. 469,484 (1895)
9. 145 N.W. 2d 178 (Wis.1966)
10. *Id.* at 182
11. *People v. Superior Court for Humboldt County,* 157 Cal.Rptr. 157 (Cal. App.1979)
12. *In re Two Minor Children,* 592 P.2d 166 (Nev. 1979)
13. *State v. In re R.G.W.,* 342 A.2d 869 (N.J. App. 1975), *aff'd.,* 358 A.2d 473 (N.J.1976)
14. *State of Louisiana in the Interest of Pate Causey,* 363 So.2d 472 (La.1978)
15. *Id.*
16. 407 A.2d 617 (D.C.App. 1979)
17. *Id.* at 620
18. *Id.* at 622
19. See *Breed v. Jones, supra* at 529
20. See *Kent, supra* at 553
21. *E.g., Sinclair v. State,* 132 So. 581 (Miss. 1931); *State v. Strasberg,* 110 P. 1020 (Wash.1910); see also *Buzynski v. Oliver,* 538 F.2d 6 (1st Cir.), *cert. denied,* 429 U.S. 984 (1976)
22. See Popkin and Lippert: Is there a Constitutional right to the insanity defense in juvenile court. J Fam L 10:21 (1971)
23. Indefinite in this context means until the age of majority, usually age 18 or 21.
24. This is true particularly in misdemeanor cases in which the adult punishment is a fine or imprisonment for less than one year.
25. See, *e.g., In re Winburn* at 183
26. *In re Gault, supra,* n.30 at 23
27. Vinter, R: Time Out, A National Study of Juvenile Corrections Programs (1976)
28. 491 F.2d 352 (9th Cir.), *cert. denied,* 417 U.S. 976 (1974)
29. *In re Gault, supra* at 24
30. See, *e.g.,* 16 D.C. Code §2330
31. See McCarthy, FB: The concept of responsibility in the juvenile court. U Mich J L Ref 10:181 (1977)
32. *In re Winburn, supra* at 184